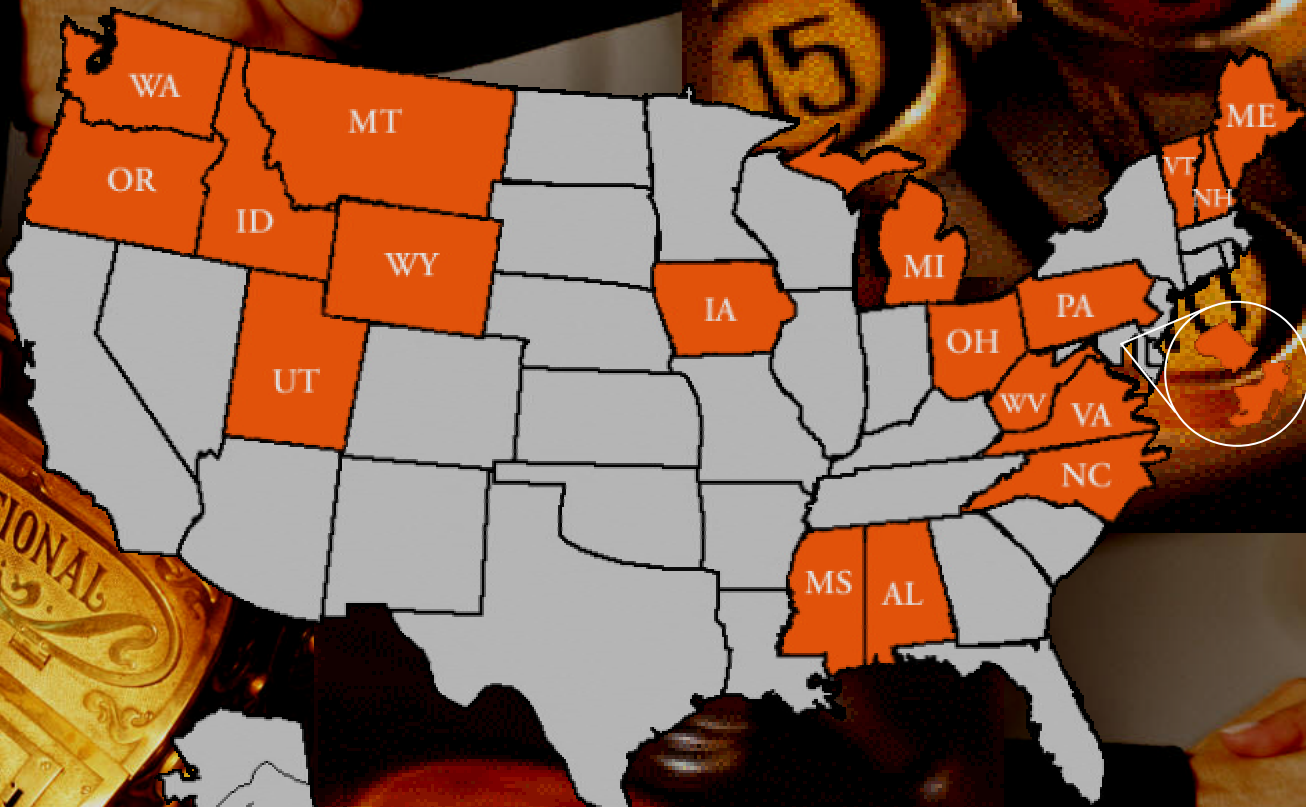


The American Experience with Alcohol



James M. Goldberg

National Alcohol Beverage Control Association

Alcohol Has Long Been Unique

- A 1705 Virginia statute banned alcohol at polling places
- Dr. Benjamin Rush's 1772 "first American temperance treatise"
- The 1791 "Whiskey Rebellion"
- Maine goes "dry" in 1851
- "Lemonade Lucy" Hayes in the White House (1877-1881)

Alcohol Has Long Been Unique

- The 18th Amendment imposes national Prohibition in 1919
- The “Noble Experiment” fails and the 21st Amendment restores legal consumption
- In 1933, states are at a “fork in the road”
 - 18 states (and two MD counties) become “control” jurisdictions
 - 32 states become “license” jurisdictions

Why a Control State?

“Toward Alcohol Control”

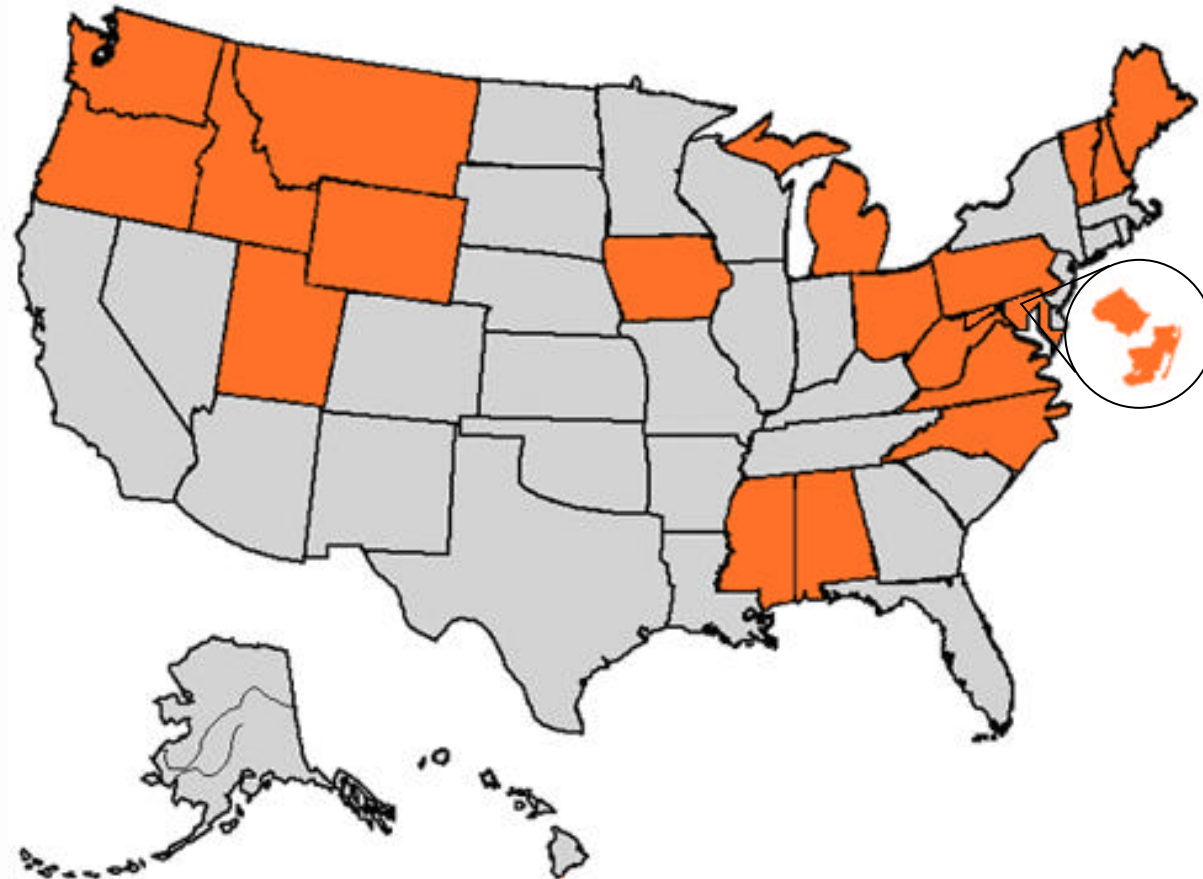
1933

“Only as the profit motive is eliminated is there any hope of controlling the liquor traffic in the interest of a decent society. To approach the problem from any other angle is only to tinker with it and insure failure. This point cannot be too heavily stressed.”

John D. Rockefeller, Jr.

The Control Systems...

...*Today*

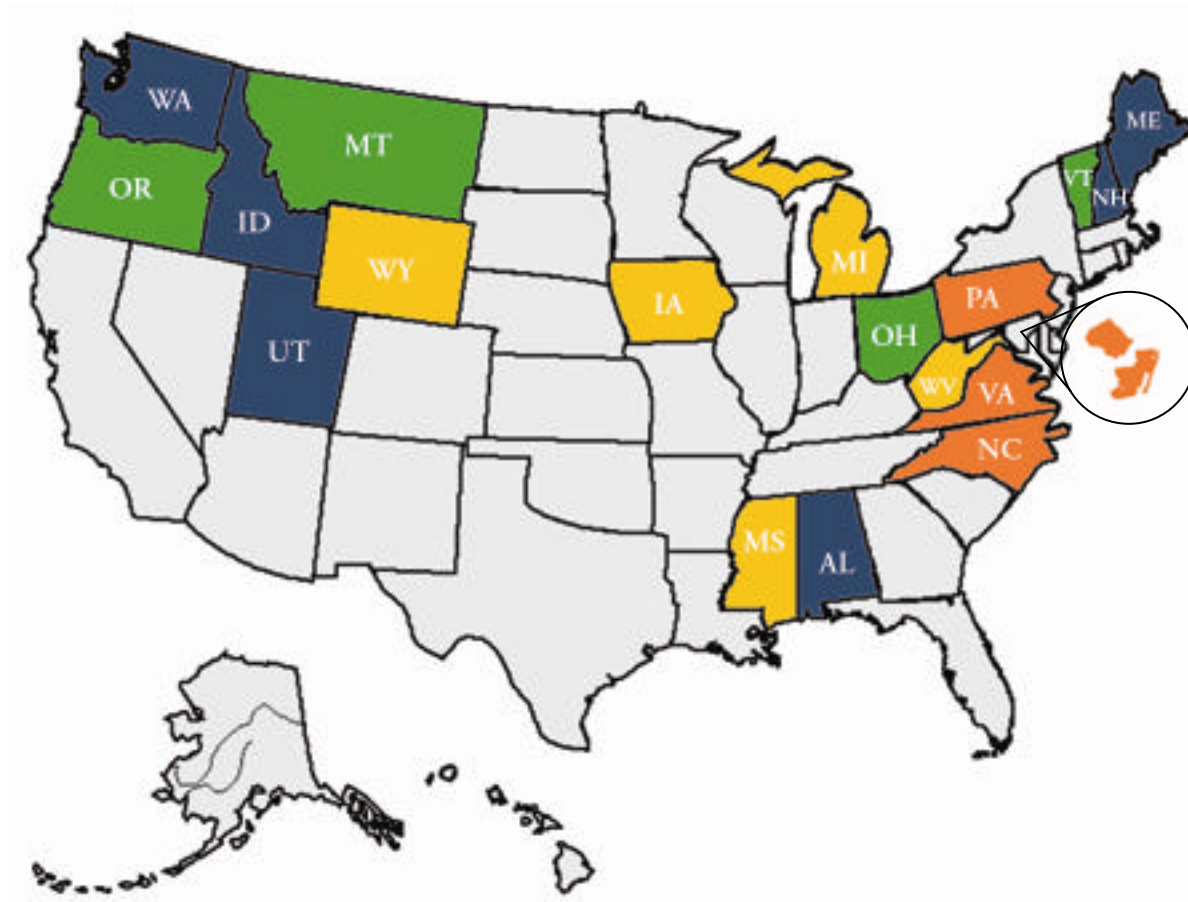



What is a Control Jurisdiction?


- It's a jurisdiction that has chosen to control the sale of alcohol by selling the product themselves
- All control states are alike, yet different
 - Some sell spirits only; others sell wine; a few sell beer
 - All operate wholesale distribution; some have state retail stores; others have “agency” stores


The Control Systems...


...spirits distribution



 State/Local Government

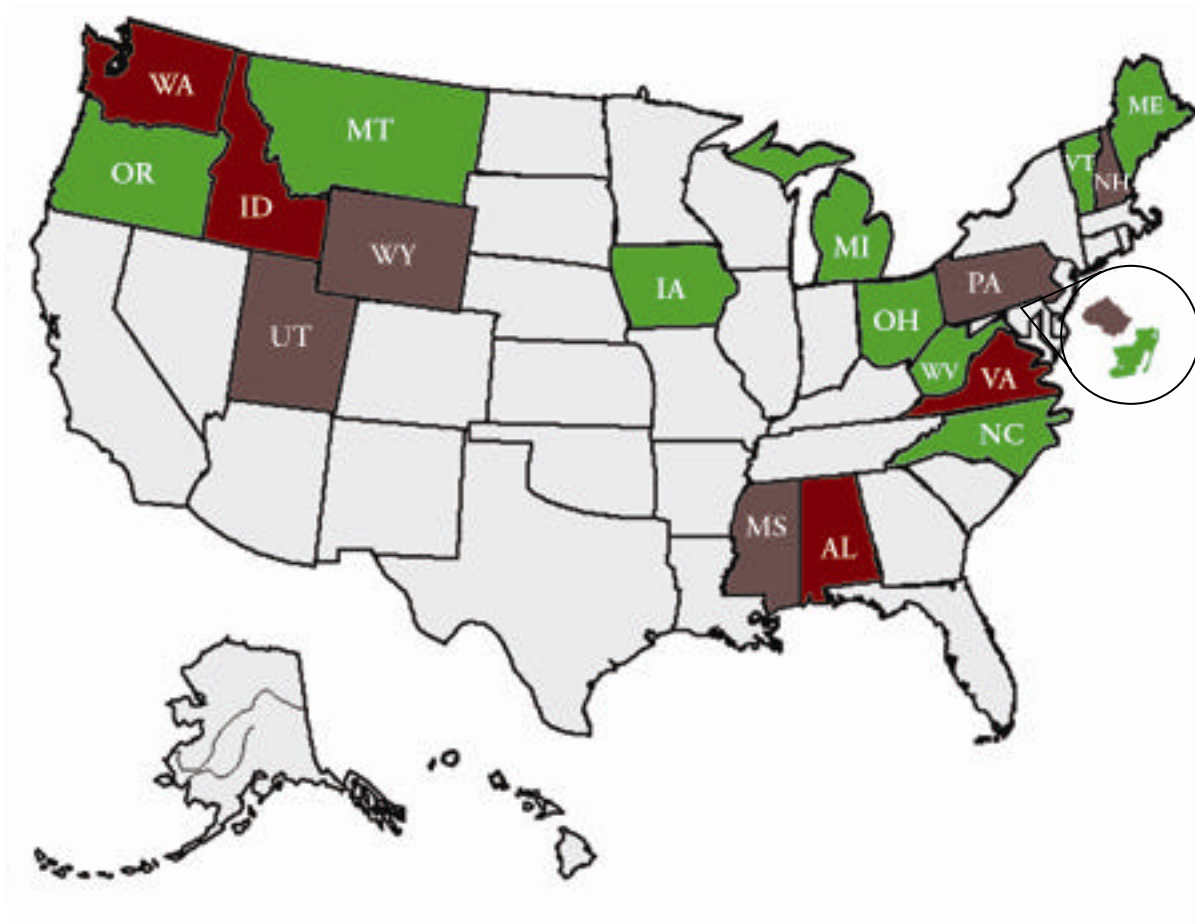
 Wholesale

 Agency Stores

 State and/or Agency Stores
(AL also has private package stores)

The Control Systems...

...wine distribution



State/Local Government



Agency



Both

Control States v. License States

- There are many similarities
 - Both license private businesses
 - Both enforce laws against such things as underage drinking
 - Both regulate trade and commerce within their borders, as does the federal government
 - Pricing and distribution policies
 - Maintenance of an orderly marketplace to promote temperance (aka moderation)

Speaking of the Feds...

- Federal Alcohol Administration Act (27 U.S.C. §201) [August 29, 1935]
 - Requires a “Basic Permit” for most sellers
 - Brewers and retailers excepted
 - Regulates unfair competition and unlawful practices
 - Exclusive outlet, “tied house,” commercial bribery, consignment sales, labeling

What is “Tied House”?

- To induce a retailer to buy product to the exclusion of others by
 - Holding any interest in a license
 - Acquiring real property used by the retailer
 - Furnishing equipment, signs, fixtures or “other thing of value”
 - Paying for advertising or display services
 - Guaranteeing a retailer’s loans
 - Extending credit for longer than normal
 - Requiring retailer to take a certain product quota

States Follow the Federal Lead

- Many states have prohibitions similar to federal “tied house” rules
- Many do not require exclusion, i.e., it’s a *per se* violation
- It’s not just a control state issue

The “Tied House” Model in the 21st Century

- Exceptions have been made over 70 years to meet changing market conditions
 - Wineries open restaurants, brewpubs
 - Brewers own amusement parks
 - Brewers buy hotels
- Not just in the control jurisdictions, but in all 50 states
- Some changes by statute, some by ABC Board rule/interpretation

States Also Separate from the Federal Lead

- State regulations go beyond the FAA Act to regulate the “middle” tier
- Again, not just a control state issue
- Aim is an orderly marketplace and fair competition, with neither producers nor retailers having the upper hand
 - Minimum markups
 - Ban on credit extension
 - Requirements on delivery

Where Are We Today?

- Alcohol is still a unique product treated in a unique way
- Basic rules endorsing a three-tier system have evolved, but are still basically in tact
- There is no “magic bullet” to “fix” the problem, if indeed there is a problem that needs fixing